

United States District Court
Northern District of California

1 MICHAEL D. TORPEY (State Bar No. 79424)
2 JAMES N. KRAMER (State Bar No. 154709)
3 CHRISTIN JOY HILL (State Bar No. 247522)
4 ALEXIS YEE-GARCIA (State Bar No. 277204)
5 Orrick, Herrington & Sutcliffe LLP
6 The Orrick Building
7 405 Howard Street
8 San Francisco, California 94105-2669
9 Telephone: (415) 773-5700
10 Facsimile: (415) 773-5759
11 Email: mtorpey@orrick.com
12 jkramer@orrick.com
13 chill@orrick.com
14 aygarcia@orrick.com
15 *Attorneys for Defendants Violin Memory Inc., Donald G. Basile, Dixon R. Doll Jr., Cory J. Sindelar, Howard A. Bain III, Lawrence J. Lang, Jeffrey J. Newman, David B. Walrod, and Mark N. Rosenblatt*
16
17 PATRICK E. GIBBS (State Bar No. 183174)
18 LATHAM & WATKINS LLP
19 140 Scott Drive
20 Menlo Park, CA 94025
21 Telephone: (650) 463-3013
22 Facsimile: (650) 463-2600
23 Email: patrick.gibbs@lw.com
24 *Attorneys for Defendants J.P. Morgan Securities LLC, Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Barclays Capital Inc., Robert W. Baird & Co. Inc., Pacific Crest Securities LLC, and EM Securities LLC*
25
26 LAURENCE D. KING (State Bar No. 206423)
27 MARIO M. CHOI (State Bar No. 243409)
28 KAPLAN FOX & KILSHEIMER LLP
29 350 Sansome Street, Suite 400
30 San Francisco, CA 94104
31 Telephone: (415) 772-4700
32 Facsimile: (415) 772-4707
33 Email: lking@kaplanfox.com
34 mchoi@kaplanfox.com
35 -and
36 JEFFREY P. CAMPISI (admitted *pro hac vice*)
37 KAPLAN FOX & KILSHEIMER LLP
38 850 Third Avenue
39 New York, NY 10022
40 Telephone: (212) 687-1980

1 Facsimile: (212) 687-7714
2 Email: jcampisi@kaplanfox.com
-and
3 NICHOLAS I. PORRITT (admitted *pro hac vice*)
4 ADAM M. APTON (admitted *pro hac vice*)
LEVI & KORSINSKY LLP
1101 30th Street NW, Suite 115
5 Washington, DC 20007
Tel: (202) 524-4290
6 Fax: (202) 337-1567
Email: nporritt@zlk.com
aapton@zlk.com
7 *Attorneys for Lead Plaintiffs Ali Shehk and*
Alan Richards, and the Proposed Class
8
9

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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In re VIOLIN MEMORY, INC.,
SECURITIES LITIGATION

Master File No. 4:13-cv-05486-YGR

CLASS ACTION

Stipulated Protective Order

Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment under
9 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
10 that this Stipulated Protective Order does not entitle them to file confidential information under
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
12 will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
20 as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other things,
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
26 responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
28 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a

1 consultant in this action.

2 2.7 House Counsel: attorneys who are employees of a party to this action. House
3 Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
5 entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
7 action but are retained to represent or advise a party to this action and have appeared in this action
8 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

9 2.10 Party: any party to this action, including all of its officers, directors, employees,
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
12 Material in this action.

13 2.12 Professional Vendors: persons or entities that provide litigation support services
14 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
15 storing, or retrieving data in any form or medium) and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
23 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
25 However, the protections conferred by this Stipulation and Order do not cover the following
26 information: (a) any information that is in the public domain at the time of disclosure to a
27 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
28 result of publication not involving a violation of this Order, including becoming part of the public

1 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
 4 of Protected Material at trial shall be governed by a separate agreement or order.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 8 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 9 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 10 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 11 time limits for filing any motions or applications for extension of time pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
 14 Non-Party that designates information or items for protection under this Order must take care to
 15 limit any such designation to specific material that qualifies under the appropriate standards. The
 16 Designating Party must designate for protection only those parts of material, documents, items, or
 17 oral or written communications that qualify – so that other portions of the material, documents,
 18 items, or communications for which protection is not warranted are not swept unjustifiably within
 19 the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 21 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 22 encumber or retard the case development process or to impose unnecessary expenses and burdens
 23 on other parties) expose the Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it designated for
 25 protection do not qualify for protection, that Designating Party must promptly notify all other
 26 Parties that it is withdrawing the mistaken designation.

27 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
 28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
7 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents or materials available for inspection need not
10 designate them for protection until after the inspecting Party has indicated which material it would
11 like copied and produced. During the inspection and before the designation, all of the material
12 made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must determine which
14 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
15 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
16 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony.

22 (c) for information produced in some form other than documentary and for any other
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
24 or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a
25 portion or portions of the information or item warrant protection, the Producing Party, to the extent
26 practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
28 designate qualified information or items does not, standing alone, waive the Designating Party's

1 right to secure protection under this Order for such material. Upon timely correction of a
 2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 3 in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 12 by providing written notice of each designation it is challenging and describing the basis for each
 13 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 15 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 16 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 17 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 18 Party must explain the basis for its belief that the confidentiality designation was not proper and
 19 must give the Designating Party an opportunity to review the designated material, to reconsider the
 20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 21 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 22 has engaged in this meet and confer process first or establishes that the Designating Party is
 23 unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 25 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding Discovery
 26 and Discovery Motions. The parties may file a joint letter brief regarding retaining confidentiality
 27 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the
 28 meet and confer process will not resolve their dispute, whichever is earlier. Failure by a

1 Designating Party to file such discovery dispute letter within the applicable 21 or 14 day period (set
 2 forth above) with the Court shall automatically waive the confidentiality designation for each
 3 challenged designation. If, after submitting a joint letter brief, the Court allows that a motion may
 4 be filed, any such motion must be accompanied by a competent declaration affirming that the
 5 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
 6 The Court, in its discretion, may elect to transfer the discovery matter to a Magistrate Judge.

7 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality
 8 designation at any time if there is good cause for doing so, including a challenge to the designation
 9 of a deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court
 10 allows that a motion may be filed, any motion brought pursuant to this provision must be
 11 accompanied by a competent declaration affirming that the movant has complied with the meet and
 12 confer requirements imposed in the preceding paragraph. The Court, in its discretion, may elect to
 13 transfer the discovery matter to a Magistrate Judge.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating
 15 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 16 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 17 Unless the Designating Party has waived the confidentiality designation by failing to file a letter
 18 brief to retain confidentiality as described above, all parties shall continue to afford the material in
 19 question the level of protection to which it is entitled under the Producing Party's designation until
 20 the court rules on the challenge.

21 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
 23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 25 the categories of persons and under the conditions described in this Order. When the litigation has
 26 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and in

a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A):

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A):

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
LITIGATION

1 If a Party is served with a subpoena or a court order issued in other litigation that compels
 2 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
 3 must:

4 (a) promptly notify in writing the Designating Party. Such notification shall include a
 5 copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 7 the other litigation that some or all of the material covered by the subpoena or order is subject to
 8 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
 9 and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 11 Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the subpoena
 13 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
 14 before a determination by the court from which the subpoena or order issued, unless the Party has
 15 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
 16 expense of seeking protection in that court of its confidential material – and nothing in these
 17 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
 18 disobey a lawful directive from another court.

19 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
 20 **LITIGATION**

21 (a) The terms of this Order are applicable to information produced by a Non-Party in
 22 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
 23 connection with this litigation is protected by the remedies and relief provided by this Order.
 24 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 25 additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 27 Party’s confidential information in its possession, and the Party is subject to an agreement with the
 28 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of

1 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
2 communication or information covered by the attorney-client privilege or work product protection,
3 the parties may incorporate their agreement in the stipulated protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
6 seek its modification by the court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
8 no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the material covered by
11 this Protective Order.

12 12.3 Filing Protected Material. Without written permission from the Designating Party or
13 a court order secured after appropriate notice to all interested persons, a Party may not file in the
14 public record in this action any Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
17 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
18 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
19 to protection under the law. If a Receiving Party's request to file Protected Material under seal
20 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
21 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
22 by the court.

23 13. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
25 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
26 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
28 the Protected Material is returned or destroyed, the Receiving Party must submit a written

1 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
2 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
3 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
4 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of
5 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
6 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
8 and expert work product, even if such materials contain Protected Material. Any such archival
9 copies that contain or constitute Protected Material remain subject to this Protective Order as set
10 forth in Section 4 (DURATION). The provisions of this paragraph shall not apply to any
11 Discovery Material that was transmitted electronically to any party to the Litigation and whose
12 removal or destruction from that party's electronic systems would violate applicable federal or
13 state law, rule, regulation, or policies regarding record retention, and procedures reasonably
14 designed to ensure compliance with such laws, rules or regulations.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 27, 2015

3 /s/ Christin J. Hill

4 Christin J. Hill
Orrick Herrington & Sutcliffe
5 Attorneys for the Violin Memory Defendants

6 DATED: July 27, 2015

7 /s/ Patrick E. Gibbs

8 Patrick E. Gibbs
Latham & Watkins LLP
9 Attorneys for the Underwriter Defendants

10 DATED: July 27, 2015

11 /s/ Laurence D. King

12 Laurence D. King
Kaplan Fox & Kilsheimer LLP
13 Attorneys for Plaintiffs

14 DATED: July 27, 2015

15 /s/ Nicholas I. Porritt

16 Nicholas I. Porritt (Admitted *pro hac vice*)
Levi & Korsinsky LLP
17 Attorneys for Plaintiffs

18 *I, Christin J. Hill, am the ECF User whose User I.D. and password are being used to file*
19 *this Stipulation. In compliance with General Order 45, X.B., I hereby state that the above-listed*
signatories have concurred in this filing.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 DATED: July 29, 2015



4 Hon. Yvonne Gonzalez Rogers
United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, [print or type full name], of [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of In re Violin Memory, Inc., Securities Litigation,
7 Master File No. 4:13-cv-05486. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.
12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
14 even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number]
17 as my California agent for service of process in connection with this action or any proceedings
18 related to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

23 Printed name:

25 | Signature: _____